

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (8)S
Sales Tax
January 30, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851023A

On October 23, 1985, a petition for advisory opinion was received from Peter Knych, 25 Rawley Street, Rochester, New York 14607.

Petitioner has been granted a license by a business allowing petitioner to resell tangible personal property at the location of the licensor. The tangible personal property sold by Petitioner is purchased by Petitioner from an unrelated third party.

The terms of the license agreement require the business to provide the Petitioner with selling space at the business' store location. Furthermore, under the license agreement, all payments, including sales tax, made pursuant to the sale of the Petitioner's product will be made to and collected by the business/licensor. The business/licensor will then turn over the payments to the Petitioner who in consideration for the business/licensor's services and grant of license will pay the business/licensor ten-percent (10%) of the sales price.

Petitioner asks whether he, his licensor or the third party who sells tangible personal property to him is liable for the collection and remittance of sales tax on Petitioner's sales of tangible personal property.

Section 526.10(g) of the Sales and Use Tax regulations provide as follows:

(g) Leased departments and concessions. (1) Every person making sales from a concession or department leased from a vendor and operated under the name of another vendor, is for sales tax purposes a vendor required to register and file returns with the bureau.

(2) Leased departments and concessions which collect and account for their sales independently from the lessor-vendor must undertake all the responsibilities of a vendor, as listed in subdivision (b) of this section.

(3) If a leased department or concession must account for and pay over its receipts to the lessor-vendor, the lessor-vendor must report and remit the tax thereon to the bureau with its return. The leased department or concession must also file a return reporting only its sales and have attached thereto a statement to the effect that (i) it is a leased department or concession; (ii) the lessor-vendor is responsible for reporting sales and remitting tax due; and (iii) identifying the lessor-vendor by name, address and vendor identification number. Both the leased department or concession and the lessor-vendor shall be jointly responsible for the collection and remitting of the taxes on the sales made by the leased department or concession.

TSB-A-86 (8)S
Sales Tax
January 30, 1986

Petitioner and his licensor fall within the provisions of paragraph (3) above. Accordingly, Petitioner's licensor is required to collect and remit sales tax on all of Petitioner's taxable sales. Petitioner is required to file a sales tax return reporting its sales and identifying itself as a leased department, identifying the licensor as the person responsible for reporting sales and remitting tax due and identifying the licensor by name, address and vendor identification number.

Both Petitioner and the licensor are jointly liable for the collection of sales tax on Petitioner's sales of tangible personal property.

An unrelated third party who sells tangible personal property to Petitioner will not be liable for the collection or remittance of sales tax with respect to Petitioner's taxable sales. However, Petitioner should supply to the unrelated third party a properly completed Resale Certificate (form ST-120) to establish the exemption of Petitioner's purchases for resale.

DATED: January 30, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.